



August 8, 2001

Mr. Don Hatcher
Chief of Police
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2001-3463

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150480.

The City of Leander received two requests from the same individual for information concerning an incident involving criminal mischief. The first request is for records relating to a particular incident that occurred at a specified address. The second request is for "the 'intent to prosecute' document that [the requestor] executed/signed." You have submitted records that the city deems to be responsive to both of these requests. You claim that the submitted records are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the submitted records do not include the "'intent to prosecute' document" to which the requestor specifically seeks access. In failing to submit this document, the city did not comply fully with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e)(1)(D) requires the governmental body to submit to this office, not later than the 15th business day after the date of its receipt of the request for information, a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested. Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You inform this office that the city received the request for the "'intent to prosecute' document" on May 30, 2001. The city then had fifteen business days, or until and including June 20, to submit that document to this office. The city neither submitted the "'intent to prosecute' document" nor informed this office that the submitted documents are representative samples. Therefore, the "'intent to prosecute' document" is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold it from disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 generally can be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. You claim that all of the records to which the requestor seeks access are confidential under section 261.201 of the Family Code. However, you have not submitted the specific document in question, so we have no basis for finding that it is confidential. Thus, we have no choice but to order the "'intent to prosecute' document" released per section 552.302. If you believe that this document is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

Next, we consider your claim under section 552.101 of the Government Code with regard to the documents you submitted. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential by another statute. Section 261.201 of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We believe that the submitted documents consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. You do not indicate that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that the submitted documents are

confidential under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, these records must be withheld from disclosure in their entirety under section 552.101 of the Government Code as information made confidential by law. As we are able to make this determination, we need not address your claim under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

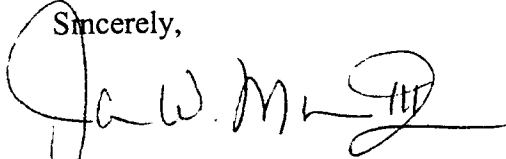
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 150480

Enc: Submitted documents

c: Mr. Jason Salvo
9713 Cinnabar Trail
Austin, Texas 78726-2447
(w/o enclosures)